

EXHIBIT G

Second Office Action (21 pages)



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EXAMINER

2311

ART UNIT

PAPER NUMBER

8

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 4-5-93 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474.
6. Copy of MPEP sect. 605.01

Part II SUMMARY OF ACTION

1. Claims 1-16, 18-22, 24-28 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. Claims 17, 23 have been cancelled.
3. Claims _____ are allowed.
4. Claims 1-16, 18-22, 24-28 are rejected.
5. Claims _____ are objected to.
6. Claims _____ are subject to restriction or election requirement.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).
12. Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. Other

EXAMINER ACTION

PTO-892 (Rev. 6-86)

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1. This Office Action is in response to the amendment filed April 5, 1993. Claims 17 and 23 are canceled by this response.
2. The Examiner takes note of amendments presented to the title but respectfully asserts that the title in its current form does little more than to describe the general area to which the invention belongs. The following title is suggested: SYSTEM AND METHOD FOR ELECTRONICALLY PROVIDING CUSTOMER SERVICES INCLUDING PAYMENT OF BILLS, FINANCIAL ANALYSIS, AND LOANS.
3. The disclosure is objected to because of the following informalities: Printer 48 on page 10 should be amended to read processor 48 in order to be consistent with the terminology of Figure 1 and claim 25. Appropriate correction is required.
4. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to teach how to make the invention.

There is no disclosure of what constitutes a TROY micr post processor. The Examiner therefore asserts that it would require undue experimentation in order to practice the invention.

Claim 25 is rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

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5. Claim 25 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As discussed above there is no indication on just what constitutes a Troy micr processor. If the term Troy is used to denote a particular brand or manufacturer name, the Examiner respectfully asserts that its use in claim 25 introduces ambiguities since there is no specific definition attached to such items. For purposes of applying art, the Examiner will assume that the processor is one used to attach MICR codes to drafts including checks.

6. Applicant has not given a post office address anywhere in the application papers as required by 37 C.F.R. § 1.33(a). A statement over applicant's signature providing a complete post office address is required.

In traversal of the request for a complete post office address, Applicant provides copies of Declarations as evidence that all addresses have been provided. In response, the Examiner directs attention to the first page of both Declarations which states "Our residence, post office addresses and citizen ships are as stated below next to our names {underline added}." However, as indicated on the second page of both Declarations only the residence and citizenship are provided, no indication of the post office address as required by 37 CFR 1.33 is provided.

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The Examiner also includes a copy of MPEP section 605.03, relevant to this issue.

7. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

8. Claims 1-16, 18-22, and 24-28 are rejected under 35 U.S.C. § 101 because they are directed to a method of doing business.

9. While a method or process is generally a statutory class of invention, there are some judicially created exceptions. In re Deutsch, 553 F.2d 689, 193 USPQ 645 (CCPA 1977); In re Chatfield, 545 F.2d 152, 191 USPQ 730 (CCPA 1976). One such exception is a method of doing business. Ex parte Murray, 9 USPQ2d (BPAI 1988); In re Wait, 73 F.2d 982, 24 USPQ 88 (CCPA 1934).

The Examiner respectfully asserts that Applicant's claimed invention is directed to a method of doing business. The instant invention is directed to providing one form of accounting services for customers. A service provider provides this service for customers via use of a computer based system. The invention first provides for input and storage of data relating to customer, parties to whom the customer is indebted (i.e., billing entities) and to mathematical interrelationships into the service provider's computer. Once instructed by the customer through electronic access means, the service provider makes payment to billing entities.

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That the instant invention is directed to a method of doing business is clear from reading the specification. The need addressed appears on page 2 of the specification.

A need exists for a method whereby a consumer can contract a single source and inform the source to pay various bills of the consumer, to have the source adjust the consumer's account with the consumer's financial institution (i.e., bank, credit union, savings and loan association, etc.) to reflect a bill payment, and to actually pay the billing entity a specified amount by a particular time.

On that same page, Applicant notes that:

Some banks have attempted to provide a service for making payments to a few billing entities to which the banks have established relations.

Also in the paragraph abridging pages 2-3 of the specification:

The invention provides a universal bill payment system that works regardless of the consumer's financial institution and the bill to be paid. The present invention provides a computerized system by which a customer may pay bills utilizing the telephone a computer terminal, or other electronic data transmission means. Transactions are recorded against the consumer's account wherever he or she banks. The consumer may be an individual or a business, large or small.

In sum, the Examiner respectfully asserts that the claimed invention is directed to provision of a service for paying debts incurred by consumer's. This service is much like that provided by accountants for their customers. Accordingly, it is clear that Applicant's claimed invention is directed to a method of accounting.

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The Examiner takes note that claims 1-8 are apparatus claims but as noted by the Walters court,

If the functionally-defined disclosed means and their equivalents are so broad that they encompass any and every means for performing the recited functions, the apparatus claim is an attempt to exalt form over substance since the claim is really to the method or series of functions itself.

Unless the Applicant demonstrates that claims are drawn to an apparatus "distinct form from other apparatus capable of performing the identical functions", then the Examiner is free to treat apparatus claims as method claims for purpose of analysis under 35 USC 101. Further, as noted in Ex parte Murray, 9 USPQ 1819 (BPAI 1988), it is irrelevant that the claimed process, if a method of doing business, is computer implemented or is practiced with the aid of an electrical system.

10. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

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11. Claims 1-11, 13-14, and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over EXCEL or PRONTO.

12. The prior art includes a variety of home banking services which allow the user to perform banking services from the home which normally required the user's presence at the bank.

Examples include PRONTO and EXCEL. Banking functions performed via these home banking systems include paying bills. While not specifically discussed in the cited abstracts, the Examiner respectfully asserts that payment of bills via use of electronic home banking services would include identification of the bank customer (i.e., the bill payer) as well as the party to whom the debt is owe. Otherwise, it would have been impossible to determine to whom funds are to be paid and from which account funds are to be deducted for payment. These systems are designed to be implemented on a computer. The Examiner therefore respectfully asserts that use home banking systems to pay bills would require means for input to a computer system of a consumer information relating to the consumer and to billing entities to be paid as well as means for storing the data input for subsequent processing.

It would have been well known at the time of the invention, that functions routinely performed by accountants include payment of bills for clients and balancing client accounts as the result of such payments from employment and/or investment income. Further, accountants will routinely suggest investment strategies

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for clients. Thus, accountants will obtain billing data for debts owed, data relating client institutions in which funds are deposited, and balance accounts (i.e., make use of mathematical interrelationships relating to billing entities and client financial institutions). Clients will have to instruct the service provider (i.e., accountant) to pay her bills in order to engage the provider's services. This relationship would have existed regardless of whether a relationship existed between the client's financial institution and the accountant or whether a relationship exists between the accountant and the billing entities. It would only be necessary that the client and the accountant have a relationship and that the institution and the client have a relationship. Further, if a bank offers its customers home banking privileges, the accountant need only have access to her client's access data in order to access the same account data and to perform instructed functions.

If the service provider made use of home banking services as a means to pay bills, the Examiner respectfully asserts that use of the computer for implementing the home banking service software would require means for input and storage of customer data including account identification, and identification of the billing entity. Both EXCEL and PRONTO allow for analysis of account data. Thus, means for defining and storing mathematical interrelationships related to customer and billing entity data would be a part of the home banking software.

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Motivation for an accountant to make use of home banking systems would be the convenience these systems offer over more traditional means of paying bills.

The invention as recited in claim 1 differs from that of home banking system used by an accountant as discussed above first in that means for input of data relating to the client financial institution is recited. The Examiner respectfully asserts that EXCEL, at least, is not associated with a specific bank and in order to take make use of the system, a user would have to provide data identifying the institution. Further, such data would be related to mathematical interrelationships discussed above since this data would needed to identify bank accounts from which deductions would be made and to obtain account balances.

The invention as recited in claim 1 also includes means for enabling the client or customer to electronically access the system in order to instruct the provider to pay bills. The Examiner respectfully asserts that client instructions would be needed to implement the service for any new billing entities. Thus, some means of communication would be necessary. Use of electronic communication in association with computer based systems (e.g., a modem and telephone lines) is well known. Motivation for the accountant and her client to make use of such a system would have been the desire to transmit data as

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conveniently as possible. Electronic communication is certainly one of the most convenient means of communicating.

Finally, home banking systems of course offer a means for enabling the service provider to make payment to the billing entity.

Claim 1 is rejected.

13. Claims 2-3 identify the means for storing data of claim 1 as a financial institution data base and a merchant master file database. The Examiner respectfully asserts that use of a database to store data was well known at the time of Applicant's invention. Motivation to make use of a database for storage of data relating to customer financial institution and merchants would have been the convenience and ready accessibility to large amounts of data provided by this form of storage. If an account has multiple clients, which is normally the case, she will have need to store large amounts of data associated with her clients. Claims 2-3 are rejected.

14. The Examiner respectfully asserts that use of home banking systems include electronic funds transfers since the bills may be paid via electronic means. Claim 4 is rejected.

15. If the accountant desires she may pay bills in the more traditional fashion by preparing checks (i.e., one form of drafts encoded with MICR codes) for payment. Motivation make use of checks would have been the desire to have some form of hardcopy as receipt. Claim 5 is rejected.

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16. Claim 6 requires use of checks written on the service providers account. The Examiner respectfully asserts that if the provider is a trustee of account set up for the benefit of the client, her name could appear as trustee on the account. Thus, any checks written for the beneficiary would be written on the service provider's account. The Examiner takes note that the trustee may not be the equitable owner of the account but respectfully asserts that she would indeed be the legal owner. Further, use of revolving line of credit by an entity for clients is well known, see for example the abstract discussing PRONTO. Claim 6 is rejected.

17. The Examiner respectfully asserts that use of a telephone to dial the access number to a commercial database was well known at the time of invention. Once the user manually dialed the number she flipped the appropriate switch on the modem and the computer systems were in direct contract. Claim 7 is rejected.

18. Use of a modem as the means of electronically accessing a remote computer would have been well known at the time of the invention. Use of a modem generally involves use of a computer terminal. Motivation to make use of a modem would have been that use of home banking systems generally require communication between a home computer and the computer of a financial institution. Claim 8 is rejected.

20. Input and storage of data relating to clients' financial institution and billing has been discussed in the rejection of

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claim 1. Defining and storage of mathematical relationships for client billing entity and financial institution data was also discussed.

Claim 9 requires establishment of credit limits by the provider and incorporation of this data into the mathematical interrelationships. Use of a credit line is discussed in the rejection of claim 6. The Examiner respectfully asserts that if a line of credit is established, the provider would have to establish the credit limit and to incorporate this into paying bills in order to prevent overdrafts from occurring.

Further, in order to determine if the line of credit is activated, the provider would have to analyze customer accounts to determine if sufficient funds are available. The Examiner respectfully asserts that since a line of credit normally involves interest charges, one skilled in the art would have preferred to make use of customer funds if sufficient and to make use of the line of credit only if needed. Thus, a determination based on the mathematical interrelationship of the preferred form of payment would involve balancing of account funds. Arrangement of payment for bills by the provider is discussed in the rejection of claim 1.

Claim 9 is rejected.

21. The Examiner respectfully assert that use of electronic funds transfer generally involves use of routing transit numbers (to identify the bank), customer account numbers (to identify the

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account from which funds are to be withdrawn), billing entity name and address (as one form of identifying to whom bills are to be paid) and merchant account numbers (if payment is to be transferred into a recipient account). Claims 10-11 are rejected.

22. Claims 13-14 and 16 recite subject matter found in claims 4, 6 and 8 respectively and are rejected on the same basis.

23. Claims 12, 18-19, 21, 24-26, and 28 are rejected under 35 U.S.C. § 103 as being unpatentable over EXCEL or PRONTO as applied to claims 1-11, 13-14, and 16 above, and further in view of ELECTRONIC CHECKBOOK.

24. Claim 12 requires use of a MICR draft prepared by the computer system. ELECTRONIC CHECKBOOK discloses use of a financial management system which prints checks (i.e., one form of micr encoded drafts) for payment of bills. Motivation to include this feature in a home banking system used by accountants would be to conveniently provide clients with means to provide a hard copy of bills paid. Claim 12 is rejected.

25. ELECTRONIC CHECKBOOK is a financial management software package by STATE OF THE ART which allows the user to write checks on a printer, and to perform a "what-if" analysis of paying bills wherein the user may choose to see the result of her actions (i.e., in paying certain amounts) before finalizing that decision. That the system was contemplated for use by accountants is evident in its use of accounting terminology.

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Thus, it would have required no hindsight for an accountant to make use of ELECTRONIC CHECKBOOK. The Examiner respectfully asserts that this feature would allow a computer to analyze a consumer's payment request with regard to stored data relating to consumer's banking (i.e., money in accounts) and merchant information (i.e., amounts owed by the consumer) and predetermined parameters established for the service provider (e.g., any limitations placed on accounts in terms of minimum balances, overdrafts, etc.).

This system could have been installed on the same computer used to implement EXCEL or PRONTO. Thus, steps of inputting, storing, and providing means to request services via telecommunication means as discussed in claims 1 and 7 would have been performed. Motivation to make use of both forms of systems would have been the convenience afforded by the EXCEL and PRONTO systems which allow for remote payment of bills and the analysis feature found in ELECTRONIC CHECKBOOK.

Claim 18 includes additional steps of selecting payment means from a group consisting of micr encoded drafts, a check, a credit cards, and electronic funds transfer. The Examiner first notes that use of checks, credit cards, cash (i.e., electronic funds transfer), and drafts as forms of payment or transferring funds are well known. Further, often a consumer has each form of payment at her disposal. That is a consumer generally will have a checking account, credit card, and savings accounts from which

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funds may be drawn for cash payment or drafts. Using the analysis feature of ELECTRIC CHECKBOOK will allow the user to determine payment from which combination of accounts is the preferable. This information may be stored in the CHECKBOOK system in the form a category. The computer, when implementing the analysis feature, will select payment means as instructed by the user to perform the analysis. The accountant will choose the payment structure deemed most desirable as a result of the analysis and pay bills accordingly.

Claim 18 is rejected.

26. Claim 19 requires use of databases for financial institutions and billing entities. The Examiner respectfully asserts that as previously discussed data relating to the institution and the entity would have been maintained by the system in order to implement remote payment of bills via use of home banking systems. Claim 19 is rejected.

27. Use of a personal computer in communication with a central or front end processor is suggested through use of home banking systems of which EXCEL and PRONTO are examples. In order for home banking systems to work, the user must communicate with a remotely located bank processor via a computer. Claim 21 is rejected.

28. Selection from a credit card, electronic funds transfer, check or draft as a means of payment is discussed in the

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rejection of claim 18. Claim 24 is rejected on the same rationale.

29. As discussed in the rejection of claim 25 as vague and indefinite, the Examiner assumes that a troy processor is one used to affix micr codes to draft documents. The Examiner respectfully asserts that since routinely checks are printed with such codes, means to print them must exist. Further, if a financial management system is set up to print checks motivation would exist to include the necessary codes on these checks in order to ensure their acceptability. The only other method would be to provide checks with codes already imprinted on them.

30. Claim 26 requires a differentiation between fixed and variable merchants. The Examiner notes first that it is a well known accounting practice to set up expenses as variable and fixed. As merchants actually represent an expense to her client, an accountant making a computer financial management system such as CHECKBOOK would have been motivated to set up fixed and variable categories of expenses. Claim 26 is rejected.

31. Use of the "what-if" analysis feature of CHECKBOOK discussed above includes dollar amount edits since the user may investigate a multiplicity of scenarios to determine which payment structure is best. Claim 28 is rejected.

32. Claims 7, 15, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over EXCEL or PRONTO as applied to claims 1, 9, and 19 above, and further in view of Riskin.

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33. Riskin discloses use of touch tone telephone to access a computer storing maintained by an information provider. See column 1 line 15 to column 2 line 40. The Examiner respectfully asserts that use of the touch tone as a terminal would have been motivated by the convenience a touch tone telephone may have been found in more homes than a modem would have been. Claim 7 is rejected.

34. Claim 15 requires that the consumer who makes use of remote electronic means to instruct the system to pay bills respond to a voice unit within the system. The Examiner again notes that Riskin allows for use of a touch tone telephone as terminal means to communicate with a remote database. Column 6 lines 17-22 of the reference discloses a voice response unit 28 for providing vocal response to user input. Thus, the consumer making use of a Riskin type communication means would have been responding to a voice unit within the accountant's system. Claim 15 is rejected.

35. Claim 20 recites use of a telecommunications device in the form of a touch telephone in contact with a voice response unit. This limitation has been addressed in the rejections of claims 7 and 15. Claim 20 is rejected on the same basis.

36. Claim 22 is rejected under 35 U.S.C. § 103 as being unpatentable over EXCEL or PRONTO and CHECKBOOK as applied to claim 19 above, and further in view of Shavit.

37. Claim 22 recites means to analyze credit worthiness. Shavit, see column 9 lines 7-43, discloses determination of

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credit risks. Motivation to make use of credit risk analysis by an accountant would be the desire to minimize the risk of non-payment if credit is extended. Claim 22 is rejected.

38. Claim 27 is rejected under 35 U.S.C. § 103 as being unpatentable over EXCEL, PRONTO, and ELECTRONIC CHECKBOOK as applied to claim 19 above, and further in view of HOME ACCOUNTANT.

HOME ACCOUNTANT by ARRAYS, INC. is a financial management software package for home use which includes a feature or reminding users of bill due dates. The Examiner respectfully asserts that in order to provide this feature a processing calendar would have to be included in the system. Motivation to make use of financial management systems in conjunction with home banking systems is discussed in the above rejection of claim 18. Claim 27 is rejected.

39. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to teach how to make the invention.

The invention, as understood by the Examiner, is directed to a system for providing a bill payment service for customers. One

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feature of this system is that the service provider makes payment to designated billing entities "regardless of whether a relationship exists between the consumer's financial institution" and the provider system. The Examiner notes first that the information involves is generally not available to the public (i.e., a bank will not normally allow unrestricted access to customer accounts). Thus, some relationship between the party accessing the bank data must exist in order for that party to be allowed access to customer accounts. Whether this relationship is indirect via the customer or direct via a direct subscription to banking services will depend upon the type of system involved.

In sum, the Examiner respectfully asserts that even if a third party is authorized by a bank customer to have access to her funds in order to pay bills on her behalf, this party would have some type of relationship with that bank if only as the agent of the customer. Therefore, it is unclear how a system which necessarily accesses bank customer data can have no relationship with that bank.

Claims 1-8 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

40.

-RESPONSE TO REMARKS-

Applicant seeks to distinguish his invention over PRONTO by asserting that some form of relationship must exist between the payor's financial institution and the bill-paying system. The

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Examiner respectfully notes in response that whether the financial institution requires that the user be subscriber or not does not change the means used to implement a connection between the user's system and the bank. This requirement, if it exists, in PRONTO is only a legal technicality and does not change the apparatus used to establish some form of a connection with the bank. The Examiner notes further that motivation to establish a system which allows for home banking systems independent of a particular bank would have been the existence of multiple commercial database systems which allow users access to a data from a wide variety of source without requiring that the users have any relationship with any entity other than the information providers. That is, use of computers and modems to sell information to system subscribers is well known. Applicant merely offers a specific form to perform services normally offered by an accountant for her clients. The Examiner respectfully asserts first that claims in their current form do not distinguish over an accountant which makes use of a home banking system for her clients. The means employed are the same whether the accountant is required to be a subscriber or not.

Other arguments are addressed by application of references in the body of the rejection or are moot because of new grounds of rejection.

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41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Hayes whose telephone number is (703) 305-9773.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.

g.o.h.

June 17, 1993

Gail Hayes
GAIL O. HAYES
PRIMARY EXAMINER
GROUP 2300